

AMENDED IN SENATE JULY 2, 2014
AMENDED IN ASSEMBLY MAY 6, 2014
AMENDED IN ASSEMBLY MARCH 24, 2014
CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1607

Introduced by Assembly Member Fox

February 5, 2014

An act to amend Sections 6608 and 6608.5 of the Welfare and Institutions Code, relating to sexually violent predators.

LEGISLATIVE COUNSEL'S DIGEST

AB 1607, as amended, Fox. Sexually violent predators.

Existing law provides for the civil commitment of criminal offenders who have been determined to be sexually violent predators for treatment in a secure state hospital facility, as specified. Existing law requires the Secretary of the Department of Corrections and Rehabilitation to refer a prisoner for evaluation by the State Department of State Hospitals when the secretary determines that the person may be a sexually violent predator and specifies the judicial processes necessary for civil commitment as a sexually violent predator, including, but not limited to, the right to a jury trial. Existing law establishes provisions by which a committed person may petition for conditional release. Existing law requires the court, if it decides a petition for conditional release is not frivolous, to give notice, as specified, at least 30 court days prior to the hearing date for the petition. *Existing law requires a person who is conditionally released pursuant these provisions to be placed in the county of the domicile of the person prior to the person's incarceration,*

unless the court finds that extraordinary circumstances require placement outside the county of domicile.

This bill would recast these provisions to require the court, if it determines that the petition is not frivolous, to give notice of the court's intention to conduct a conditional release hearing. The bill would require the person petitioning for conditional release, the Director of State Hospitals, and the designated attorney of the county of commitment to notify the court within 30 court days of receipt of this notice if it appears that a county other than the county of commitment may be the county of domicile. The bill would provide that the court's determination of the county of domicile would ~~be final, govern the current petition for conditional release, and would apply to further hearings pertaining to any subsequent petitions for conditional release.~~ The bill would require that after determining the county of domicile, the court set a date for the conditional release hearing and provide notice, as specified. The bill would authorize ~~the county of domicile to elect to represent the state at the conditional release hearing;~~ *the designated attorney for the county of domicile and the designated attorney for the county of commitment, as defined, to mutually agree that the designated attorney for the county of domicile will represent the state at the conditional release hearing if the county of domicile is different than the county of commitment. If the designated attorneys do not make that agreement, the bill would provide that the designated attorney for the county of commitment will represent the state at the conditional release hearing, as specified.* The bill would provide that if the committed person has been conditionally released in a county other than the county of commitment, the jurisdiction of the person would, upon request of the designated ~~counsel~~ attorney of the county of placement, be transferred to the court of the county of placement. *The bill would additionally require that a person who is conditionally released pursuant these provisions be placed in the county of the domicile of the person prior to the person's incarceration, unless the designated county of placement was given prior notice and an opportunity to comment on the proposed placement of the committed person in the county, as specified.*

By imposing additional duties on counties in regard to conditional releases of committed persons, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6608 of the Welfare and Institutions Code
2 is amended to read:

3 6608. (a) A person who has been committed as a sexually
4 violent predator shall be permitted to petition the court for
5 conditional release with or without the recommendation or
6 concurrence of the Director of State Hospitals. If a person has
7 previously filed a petition for conditional release without the
8 concurrence of the director and the court determined, either upon
9 review of the petition or following a hearing, that the petition was
10 frivolous or that the committed person's condition had not so
11 changed that he or she would not be a danger to others in that it is
12 not likely that he or she will engage in sexually violent criminal
13 behavior if placed under supervision and treatment in the
14 community, the court shall deny the subsequent petition unless it
15 contains facts upon which a court could find that the condition of
16 the committed person had so changed that a hearing was warranted.
17 Upon receipt of a first or subsequent petition from a committed
18 person without the concurrence of the director, the court shall
19 endeavor whenever possible to review the petition and determine
20 if it is based upon frivolous grounds and, if so, shall deny the
21 petition without a hearing. The person petitioning for conditional
22 release under this subdivision shall be entitled to assistance of
23 counsel in all hearings under this section. The person petitioning
24 for conditional release shall serve a copy of the petition on the
25 State Department of State Hospitals at the time the petition is filed
26 with the court.

27 (b) The procedure for a conditional release hearing in a case
28 where the county of domicile has not yet been determined shall
29 be as follows:

30 (1) If the court deems the petition not frivolous pursuant to
31 subdivision (a), the court shall give notice to the attorney

1 designated in subdivision (i) of Section 6601, the retained or
2 appointed attorney for the committed person, and the Director of
3 State Hospitals of its intention to set a conditional release hearing.
4 The person petitioning for conditional release, the Director of State
5 Hospitals, and the designated attorney of the county of commitment
6 shall notify the court within 30 court days of receipt of this notice
7 if it appears that a county other than the county of commitment
8 may be the county of domicile.

9 (2) If no county other than the county of commitment appears
10 to be the county of domicile, the court shall determine, consistent
11 with Section 6608.5, that the county of commitment is the county
12 of domicile.

13 (3) If it appears or there are allegations that one or more
14 counties, other ~~than~~ *than* the county of commitment, may be the
15 county of domicile, the court shall set a hearing to determine the
16 county of domicile, consistent with the provisions of Section
17 6608.5. The court shall, at least 30 court days prior to the hearing,
18 give notice of the domicile hearing to the persons listed in
19 paragraph (1) and to the designated attorney for any county that
20 is alleged to be the county of domicile. Persons listed in this
21 paragraph and paragraph (1) may, at least 10 *court* days prior to
22 the hearing, file and serve declarations, documentary evidence,
23 and other pleadings, that are specific only to the issue of domicile.
24 The court may, consistent with Section 6608.5, decide the issue
25 of domicile solely on the pleadings, or additionally permit, in the
26 interests of justice, argument and testimony.

27 (4) After determining the county of domicile pursuant to
28 paragraph (2) *or* (3), the court shall set a date for a conditional
29 release hearing and shall give notice of the hearing at least 30 court
30 days before the hearing to the persons described in paragraph (1)
31 and the designated attorney for the county of domicile.

32 ~~(5) In a hearing under paragraph (4), the designated attorney of~~
33 ~~the county of domicile shall have the right to represent the state~~
34 ~~at the conditional release hearing. If the designated attorney for~~
35 ~~the county of domicile elects to represent the state at the conditional~~
36 ~~release hearing, the designated attorney shall give notice at least~~
37 ~~20 days before the conditional release hearing to the parties listed~~
38 ~~in paragraph (1) and to the court. If the election is made to represent~~
39 ~~the state, the designated attorney for the county of commitment~~
40 ~~shall cooperate with the designated attorney for the county of~~

1 ~~domicile but will not appear at the hearing on behalf of the state,~~
2 ~~except in the case where the county of commitment and the county~~
3 ~~of domicile are the same.~~

4 (5) (A) *If the county of domicile is different than the county of*
5 *commitment, the designated attorney for the county of domicile*
6 *and the designated attorney for the county of commitment may*
7 *mutually agree that the designated attorney for the county of*
8 *domicile will represent the state at the conditional release hearing.*
9 *If the designated attorneys do not make this agreement, the*
10 *designated attorney for the county of commitment will represent*
11 *the state at the conditional release hearing.*

12 (B) *At least 20 court days before the conditional release hearing,*
13 *the designated attorney for the county of commitment shall give*
14 *notice to the parties listed in paragraph (1) and to the court*
15 *whether the state will be represented by the designated attorney*
16 *of the county of domicile or the designated attorney of the county*
17 *of commitment.*

18 (C) *The designated attorney for the county of domicile and the*
19 *designated attorney for the county of commitment should cooperate*
20 *with each other to ensure that all relevant evidence is submitted*
21 *on behalf of the state. No attorney other than the designated*
22 *attorney for the county representing the state shall appear on*
23 *behalf of the state at the conditional release hearing.*

24 (6) ~~The court's determination of a county of domicile shall be~~
25 ~~final and shall apply to future proceedings under this article; govern~~
26 ~~the current and any subsequent petition for conditional release~~
27 ~~under this section.~~

28 (7) For the purpose of this subdivision, the term "county of
29 domicile" shall have the same meaning as defined in Section
30 6608.5.

31 (8) For purposes of this section, the term "~~designated attorney~~"
32 ~~attorney of the county of commitment~~" means the attorney
33 designated in subdivision (i) of Section ~~6601~~. ~~6601 in the county~~
34 ~~of commitment.~~

35 (9) *For purposes of this section, the term "designated attorney*
36 *for the county of domicile" means the attorney designated in*
37 *subdivision (i) of Section 6601 in the county of domicile.*

38 (c) The proceedings for a conditional release hearing in a case
39 where the court has previously determined the county of domicile
40 shall be as follows:

1 (1) If the court determines, pursuant to subdivision (a), that the
2 petition is not frivolous, the court shall give notice of the hearing
3 date at least 30 days prior to the hearing to the designated attorneys
4 for the county of domicile and the county of commitment, the
5 retained or appointed attorney for the petitioner, and the Director
6 of State Hospitals.

7 (2) Representation of the state at the conditional release hearing
8 shall be pursuant to paragraph (5) of subdivision (b).

9 (d) (1) If a committed person has been conditionally released
10 by a court to a county other than the county of domicile, and the
11 jurisdiction of the person has been transferred to that county,
12 pursuant to subdivision (g) of Section 6608.5, the notice specified
13 in paragraph (1) of subdivision (c) shall be given to the designated
14 attorney of the county of placement who shall represent the state
15 in any further proceedings.

16 (2) The term “county of placement” means the county where
17 the court has placed a person who is granted conditional release.

18 (e) If the petition for conditional release is made without the
19 consent of the director of the treatment facility, no action shall be
20 taken on the petition by the court without first obtaining the written
21 recommendation of the director of the treatment facility.

22 (f) A hearing upon the petition shall not be held until the person
23 who is committed has been under commitment for confinement
24 and care in a facility designated by the Director of State Hospitals
25 for not less than one year from the date of the order of commitment.
26 A hearing upon the petition shall not be held until the community
27 program director designated by the State Department of State
28 Hospitals submits a report to the court that makes a
29 recommendation as to the appropriateness of placing the person
30 in a state-operated forensic conditional release program.

31 (g) The court shall hold a hearing to determine whether the
32 person committed would be a danger to the health and safety of
33 others in that it is likely that he or she will engage in sexually
34 violent criminal behavior due to his or her diagnosed mental
35 disorder if under supervision and treatment in the community. The
36 attorney designated pursuant to paragraph (5) of subdivision (b)
37 shall represent the state and shall have the committed person
38 evaluated by experts chosen by the state. The committed person
39 shall have the right to the appointment of experts, if he or she so
40 requests. If the court at the hearing determines that the committed

1 person would not be a danger to others due to his or her diagnosed
2 mental disorder while under supervision and treatment in the
3 community, the court shall order the committed person placed with
4 an appropriate forensic conditional release program operated by
5 the state for one year. A substantial portion of the state-operated
6 forensic conditional release program shall include outpatient
7 supervision and treatment. The court shall retain jurisdiction of
8 the person throughout the course of the program, except as
9 provided in subdivision (g) of Section 6608.5.

10 (h) Before placing a committed person in a state-operated
11 forensic conditional release program, the community program
12 director designated by the State Department of State Hospitals
13 shall submit a written recommendation to the court stating which
14 forensic conditional release program is most appropriate for
15 supervising and treating the committed person. If the court does
16 not accept the community program director's recommendation,
17 the court shall specify the reason or reasons for its order on the
18 record. The procedures described in Sections 1605 to 1610,
19 inclusive, of the Penal Code shall apply to the person placed in
20 the forensic conditional release program.

21 (i) If the court determines that the person should be transferred
22 to a state-operated forensic conditional release program, the
23 community program director, or his or her designee, shall make
24 the necessary placement arrangements and, within 30 days after
25 receiving notice of the court's finding, the person shall be placed
26 in the community in accordance with the treatment and supervision
27 plan unless good cause for not doing so is presented to the court.

28 (j) If the court denies the petition to place the person in an
29 appropriate forensic conditional release program, the person may
30 not file a new application until one year has elapsed from the date
31 of the denial.

32 (k) In a hearing authorized by this section, the committed person
33 shall have the burden of proof by a preponderance of the evidence,
34 unless the report required by Section 6604.9 determines that
35 conditional release to a less restrictive alternative is in the best
36 interest of the person and that conditions can be imposed that would
37 adequately protect the community, in which case the burden of
38 proof shall be on the state to show, by a preponderance of the
39 evidence, that conditional release is not appropriate.

1 (l) Time spent in a conditional release program pursuant to this
2 section shall not count toward the term of commitment under this
3 article unless the person is confined in a locked facility by the
4 conditional release program, in which case the time spent in a
5 locked facility shall count toward the term of commitment.

6 (m) After a minimum of one year on conditional release, the
7 committed person, with or without the recommendation or
8 concurrence of the Director of State Hospitals, may petition the
9 court for unconditional discharge. The court shall use the
10 procedures described in subdivisions (a) and (b) of Section 6605
11 to determine if the person should be unconditionally discharged
12 from commitment on the basis that, by reason of a diagnosed
13 mental disorder, he or she is no longer a danger to the health and
14 safety of others in that it is not likely that he or she will engage in
15 sexually violent criminal behavior.

16 SEC. 2. Section 6608.5 of the Welfare and Institutions Code
17 is amended to read:

18 6608.5. (a) A person who is conditionally released pursuant
19 to this article shall be placed in the county of the domicile of the
20 person prior to the person's incarceration, ~~unless the court finds~~
21 ~~that extraordinary circumstances require placement outside the~~
22 ~~county of domicile. both of the following conditions are satisfied:~~

23 (1) *The court finds that extraordinary circumstances require*
24 *placement outside the county of domicile.*

25 (2) *The designated county of placement was given prior notice*
26 *and an opportunity to comment on the proposed placement of the*
27 *committed person in the county, according to procedures set forth*
28 *in Section 6609.1.*

29 (b) (1) For the purposes of this section, "county of domicile"
30 means the county where the person has his or her true, fixed, and
31 permanent home and principal residence and to which he or she
32 has manifested the intention of returning whenever he or she is
33 absent. For the purposes of determining the county of domicile,
34 the court may consider information found on a California driver's
35 license, California identification card, recent rent or utility receipt,
36 printed personalized checks or other recent banking documents
37 showing that person's name and address, or information contained
38 in an arrest record, probation officer's report, trial transcript, or
39 other court document. If no information can be identified or
40 verified, the county of domicile of the individual shall be

1 considered to be the county in which the person was arrested for
2 the crime for which he or she was last incarcerated in the state
3 prison or from which he or she was last returned from parole.

4 (2) In a case where the person committed a crime while being
5 held for treatment in a state hospital, or while being confined in a
6 state prison or local jail facility, the county wherein that facility
7 was located shall not be considered the county of domicile unless
8 the person resided in that county prior to being housed in the
9 hospital, prison, or jail.

10 (c) For the purposes of this section, “extraordinary
11 circumstances” means circumstances that would inordinately limit
12 the department’s ability to effect conditional release of the person
13 in the county of domicile in accordance with Section 6608 or any
14 other provision of this article, and the procedures described in
15 Sections 1605 to 1610, inclusive, of the Penal Code.

16 (d) The county of domicile shall designate a county agency or
17 program that will provide assistance and consultation in the process
18 of locating and securing housing within the county for persons
19 committed as sexually violent predators who are about to be
20 conditionally released under Section 6608. Upon notification by
21 the department of a person’s potential or expected conditional
22 release under Section 6608, the county of domicile shall notify the
23 department of the name of the designated agency or program, at
24 least 60 days before the date of the potential or expected release.

25 (e) In recommending a specific placement for community
26 outpatient treatment, the department or its designee shall consider
27 all of the following:

28 (1) The concerns and proximity of the victim or the victim’s
29 next of kin.

30 (2) The age and profile of the victim or victims in the sexually
31 violent offenses committed by the person subject to placement.
32 For purposes of this subdivision, the “profile” of a victim includes,
33 but is not limited to, gender, physical appearance, economic
34 background, profession, and other social or personal characteristics.

35 (f) Notwithstanding any other provision of law, a person released
36 under this section shall not be placed within one-quarter mile of
37 any public or private school providing instruction in kindergarten
38 or any of grades 1 to 12, inclusive, if either of the following
39 conditions exist:

1 (1) The person has previously been convicted of a violation of
2 Section 288.5 of, or subdivision (a) or (b), or paragraph (1) of
3 subdivision (c) of Section 288 of, the Penal Code.

4 (2) The court finds that the person has a history of improper
5 sexual conduct with children.

6 (g) If the committed person has been conditionally released in
7 a county other than the county of commitment, the jurisdiction of
8 the person shall, upon request of the designated ~~counsel~~ *attorney*
9 of the county of placement, be transferred to the court of the county
10 of placement.

11 SEC. 3. If the Commission on State Mandates determines that
12 this act contains costs mandated by the state, reimbursement to
13 local agencies and school districts for those costs shall be made
14 pursuant to Part 7 (commencing with Section 17500) of Division
15 4 of Title 2 of the Government Code.